



Senate Bill No. 963

Public Act No. 09-55

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 33-855 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

As used in sections 33-855 to 33-872, inclusive, as amended by this act:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive thereof. For purposes of subdivision (4) of subsection (b) of section 33-856, a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for purposes of sections 33-862 to 33-872, inclusive, as amended by this act, includes the surviving entity in a merger.

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(4) "Fair value" means the value of the corporation's shares determined: (A) Immediately before the effectuation of the corporate action to which the shareholder objects, (B) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, and (C) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the certificate of incorporation pursuant to subdivision (5) of subsection (a) of section 33-856.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) "Interested transaction" means a corporate action specified in subsection (a) of section 33-856, as amended by this act, other than a merger pursuant to section 33-818, as amended by this act, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition: (A) "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action: (i) Was the beneficial owner of twenty per cent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; (ii) had the power, contractually or otherwise, to cause the appointment or election of twenty-five per cent or more of the directors to the board of directors of the corporation; or (iii) was a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally

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available to other shareholders as such, other than: (I) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action; or (II) employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 33-783; or (III) in the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate; and (B) "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

[(6)] (7) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

[(7)] (8) "Record shareholder" means the person in whose name

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shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

[(8)] (9) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer and any individual in charge of a principal business unit or function.

[(9)] (10) "Shareholder" means both a record shareholder and a beneficial shareholder.

Sec. 2. Section 33-862 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) If proposed corporate action requiring appraisal rights under subsection (a) of section 33-856, as amended by this act, becomes effective, the corporation must deliver a written appraisal notice and form required by subdivision (1) of subsection (b) of this section to all shareholders who satisfied the requirements of section 33-861. In the case of a merger under section 33-818, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice [shall] must be sent no earlier than the date the corporate action specified in subsection (a) of section 33-856, as amended by this act, became effective and no later than ten days after such date, and shall:

(1) Supply a form that (A) specifies the first date of [the first] any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, [and] (B) if such announcement was made, requires the shareholder asserting appraisal rights to certify [(A)] whether [or not] beneficial ownership of those shares for which appraisal rights are asserted [were] was acquired before that date, and [(B) that the] (C)

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requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(A) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (B) of this subdivision;

(B) A date by which the corporation must receive the form which date may not be fewer than forty nor more than sixty days after the date the appraisal notice and form under subsection (a) of this section are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(C) The corporation's estimate of the fair value of the shares;

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten days after the date specified in subparagraph (B) of this subdivision, the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under section 33-863, as amended by this act, must be received, which date must be within twenty days after the date specified in subparagraph (B) of this subdivision; and

(3) Be accompanied by a copy of sections 33-855 to 33-872, inclusive, as amended by this act.

Sec. 3. Section 33-856 of the general statutes is repealed and the

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following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (A) if shareholder approval is required for the merger by section 33-817 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (B) if the corporation is a subsidiary and the merger is governed by section 33-818, as amended by this act;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to section 33-831 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the certificate of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

(5) Any other merger, share exchange, disposition of assets or amendment to the certificate of incorporation to the extent provided by the certificate of incorporation, the bylaws or a resolution of the board of directors.

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(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (1), (2), (3) and (4) of subsection (a) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(A) [Listed on the New York Stock Exchange or the American Stock Exchange or designated as a National Market System security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or] A covered security under Section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended;

(B) [not so listed or designated but] Traded in an organized market and has at least two thousand shareholders and [the outstanding shares of such class or series has] a market value of at least twenty million dollars, exclusive of the value of such shares held by [its] the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than ten per cent of such shares; or

(C) Issued by an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

(2) The applicability of subdivision (1) of this subsection shall be determined as of: (A) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or (B) the day before the effective date of such corporate action if there is no meeting of shareholders.

(3) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this

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section for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision (1) of this subsection at the time the corporate action becomes effective.

[(4) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where:

(A) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

(i) Is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of twenty per cent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(ii) Directly or indirectly has, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of twenty-five per cent or more of the directors to the board of directors of the corporation; or

(B) Any of the shares or assets of the corporation are being acquired

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or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(i) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action; or

(ii) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 33-783; or

(iii) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(5) For the purposes of subdivision (4) of this subsection, "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided a member of a National Securities Exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules

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of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.]

(4) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the certificate of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the certificate of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

(d) Where the right to be paid the value of shares is made available to a shareholder by this section, such remedy shall be the exclusive remedy as holder of such shares against the corporate [transactions] actions described in this section, whether or not the shareholder proceeds as provided in sections 33-855 to 33-872, inclusive, as amended by this act.

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Sec. 4. Section 33-698 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

[(a) Any action which, under any provision of sections 33-600 to 33-998, inclusive, may be taken at a meeting of shareholders may be taken without a meeting as follows: (1) By one or more consents in writing, setting forth the action so taken or to be taken, bearing the date of signature and signed by all of the persons who would be entitled to vote upon such action at a meeting, or by their duly authorized attorneys, which action for purposes of this section is hereafter referred to as "unanimous written consent"; or (2) if the certificate of incorporation so provides, by one or more consents in writing, bearing the date of signature and setting forth the action to be taken, signed by persons holding such designated proportion, not less than a majority, of the voting power of shares, or of the shares of any particular class, entitled to vote thereon or to take such action, as may be provided in the certificate of incorporation, or their duly authorized attorneys; except that directors may not be elected by action of shareholders without a meeting of shareholders other than by unanimous written consent, or pursuant to a plan of merger. If action is proposed to be taken by written consent of less than all of such persons, or their duly authorized attorneys, notice in writing of such proposed action shall be given to each person who would be entitled to vote thereon at a meeting held for that purpose. Such notice shall be given in the manner of giving notice of a meeting of shareholders not less than twenty days nor more than fifty days before the date any such consents are to become effective. If not less than five days before the date any such consents are to become effective, the secretary of the corporation shall have received from such persons, or their duly authorized attorneys, holding not less than one-tenth of the voting power of all shares entitled to vote at such a meeting, a demand in writing that such action not be taken by written consent, all persons to whom such notice was given shall be so notified, and the corporation

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shall not take such proposed action except at a meeting of shareholders. The secretary shall file such consent or consents, or certify the tabulation of such consents and file such certificate, with the minutes of the meetings of the shareholders.]

(a) Action required or permitted under any provision of sections 33-600 to 33-998, inclusive, as amended by this act, to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) The certificate of incorporation may provide that any action required or permitted by any provision of sections 33-600 to 33-998, inclusive, as amended by this act, to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

[(b)] (c) If not otherwise fixed under section [33-697 or] 33-701, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting [is the date the first shareholder signs the consent under subsection (a) of this section] shall be the first date on which a signed written consent is delivered to the

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corporation. If not otherwise fixed under section 33-701 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest date [appearing] on which a consent delivered to the corporation [in the manner] as required by this section was signed, written consents signed by [shareholders sufficient in number to take corporate action are received by] the holders of shares having sufficient votes to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect [, provided such revocation shall not be effective if it is received by the corporation after the corporation has received a sufficient number of unrevoked written consents to take corporate action] delivered to the corporation before unrevoked written consents sufficient to take the corporate action are delivered to the corporation.

[(c)] (d) A consent signed [under] pursuant to the provisions of this section has the effect of a [meeting] vote taken at a meeting and may be described as such in any document. Unless the certificate of incorporation, the bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

(e) If any provision of sections 33-600 to 33-998, inclusive, as amended by this act, requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten days after (1) written consents sufficient to take the action have been

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delivered to the corporation, or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of sections 33-600 to 33-998, inclusive, as amended by this act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after (1) written consents sufficient to take the action have been delivered to the corporation, or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of sections 33-600 to 33-998, inclusive, as amended by this act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) of this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic

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transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

Sec. 5. Section 33-695 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) [A] Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 33-698, as amended by this act, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, provided, if a corporation's certificate of incorporation authorizes shareholders to cumulate their votes when electing directors pursuant to section 33-712, as amended by this act, directors may not be elected by less than unanimous written consent.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Sec. 6. Section 33-697 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The superior court for the judicial district where a corporation's principal office or, if none in this state, its registered office is located may summarily order a meeting to be held: (1) On application of any shareholder of the corporation entitled to participate in an annual

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meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or (2) on application of a shareholder who signed a demand for a special meeting valid under section 33-696, if: (A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or (B) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Sec. 7. Section 33-712 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) Unless otherwise provided in the certificate of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the certificate of incorporation so provides.

(c) A statement included in the certificate of incorporation that "all or a designated voting group of shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are

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entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless: (1) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or (2) a shareholder who has the right to cumulate [his] votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of [his] the shareholder's intent to cumulate [his] votes during the meeting, and, if one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Sec. 8. Section 33-860 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) [If proposed] Where any corporate action [described] specified in subsection (a) of section 33-856, as amended by this act, is to be submitted to a vote at a shareholders' meeting, the meeting notice [shall] must state that the corporation has concluded that the shareholders are, are not or may be entitled to assert appraisal rights under sections 33-855 to 33-872, inclusive, as amended by this act. If the corporation concludes that appraisal rights are or may be available, a copy of sections 33-855 to 33-872, inclusive, as amended by this act, must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section 33-818, as amended by this act, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 33-862, as amended by this act.

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(c) Where any corporate action specified in subsection (a) of section 33-856, as amended by this act, is to be approved by written consent of the shareholders pursuant to section 33-698, as amended by this act:

(1) Written notice that appraisal rights are, are not or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 33-855 to 33-872, inclusive, as amended by this act; and

(2) Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonvoting and nonconsenting shareholders required by subsections (e) and (f) of section 33-698, as amended by this act, may include the materials described in section 33-862, as amended by this act, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 33-855 to 33-872, inclusive, as amended by this act.

Sec. 9. Section 33-861 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) If [proposed] a corporate action [requiring appraisal rights under] specified in subsection (a) of section 33-856, as amended by this act, is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares: (1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated, and (2) must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in subsection (a) of section 33-856,

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as amended by this act, is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not execute a consent in favor of the proposed action with respect to that class or series of shares.

[(b)] (c) A shareholder who [does not] fails to satisfy the requirements of subsection (a) or (b) of this section is not entitled to payment under sections 33-855 to 33-872, inclusive, as amended by this act.

Sec. 10. Section 33-863 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) A shareholder who receives notice pursuant to section 33-862, as amended by this act, and who wishes to exercise appraisal rights must [certify on] sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subparagraph (B) of subdivision (2) of subsection (b) of section 33-862, as amended by this act. In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to subdivision (1) of subsection (b) of [said] section 33-862, as amended by this act. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 33-867, as amended by this act. [In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subparagraph (B) of subdivision (2) of subsection (b) of section 33-862.] Once a shareholder deposits [the] that shareholder's certificates or, in the case of uncertificated shares, returns

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the [executed] signed forms, [the] that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) A shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subparagraph (E) of subdivision (2) of subsection (b) of section 33-862, as amended by this act. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not [execute] sign and return the form and, in the case of certificated shares, deposit [the] that shareholder's share certificates where required, each by the date set forth in the notice described in subsection (b) of section 33-862, as amended by this act, shall not be entitled to payment under sections 33-855 to 33-872, inclusive, as amended by this act.

Sec. 11. Subsection (a) of section 33-867 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) A corporation may elect to withhold payment required by section 33-865, as amended by this act, from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision (1) of subsection (b) of section 33-862, as amended by this act.

Sec. 12. Section 33-739 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

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(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next or, if their terms are staggered in accordance with section 33-740, at the applicable second, third, fourth or fifth, annual shareholders' meeting following their election [unless their terms are staggered under section 33-740] except to the extent (1) provided in section 13 of this act if a bylaw electing to be governed by that section is in effect, or (2) a shorter term is specified in the certificate of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) [Despite] Except to the extent otherwise provided in the certificate of incorporation or under section 13 of this act if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, [he] the director continues to serve until [his] the director's successor is elected and qualifies or until there is a decrease in the number of directors.

Sec. 13. (NEW) (*Effective October 1, 2009*) (a) Unless the certificate of incorporation specifically prohibits the adoption of a bylaw pursuant to this section, alters the vote specified in subsection (a) of section 33-712 of the general statutes, as amended by this act, or provides for cumulative voting, a public corporation may elect in its bylaws to be governed in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without

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cumulating the votes;

(2) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of (A) ninety days from the date on which the voting results are determined pursuant to subdivision (5) of subsection (b) of section 33-713 of the general statutes, or (B) the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which section 33-744 of the general statutes applies. Subject to subdivision (3) of this subsection, a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety-day period specified in subparagraph (A) of this subdivision; and

(3) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(b) Subsection (a) of this section does not apply to an election of directors by a voting group if (1) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (2) absent such a provision, at a time fixed by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

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(c) A bylaw electing to be governed by this section may be repealed:

(1) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, by the board of directors or the shareholders.

Sec. 14. Section 33-741 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) A director may resign at any time by delivering a written [notice] resignation to the board of directors [, the chairman of the board of directors] or its chairperson or to the secretary of the corporation.

(b) A resignation is effective when the [notice] resignation is delivered unless the [notice] resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

Sec. 15. Subsection (b) of section 33-744 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

Sec. 16. Subsection (b) of section 33-806 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

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(b) A corporation's board of directors may amend or repeal the corporation's bylaws unless: (1) The certificate of incorporation, [or] section 33-808 or, if applicable, section 13 of this act reserves [such] that power exclusively to the shareholders in whole or part; or (2) the shareholders [] in amending, repealing or adopting a [particular] bylaw [] expressly provide that the board of directors may not amend, repeal or reinstate that bylaw.

Sec. 17. Section 33-602 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

As used in sections 33-600 to 33-998, inclusive, as amended by this act, and sections 13 and 22 of this act:

(1) "Address" means location as described by the full street number, if any, street, city or town, state or country and not a mailing address such as a post office box.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Certificate of incorporation" means the original certificate of incorporation or restated certificate of incorporation, and all amendments thereto, and all certificates of merger or consolidation. In the case of a specially chartered corporation, "certificate of incorporation" means the special charter of the corporation, including any portions of the charters of its predecessor companies which have continuing effect, and any amendments to the charter made by special act or pursuant to general law. In the case of a corporation formed before January 1, 1961, or of a specially chartered corporation, "certificate of incorporation" includes those portions of any other corporate instruments or resolutions of current application in which are set out provisions of the sort which either (A) are required by sections 33-600 to 33-998, inclusive, as amended by this act, to be

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embodied in the certificate of incorporation, or (B) are expressly permitted by sections 33-600 to 33-998, inclusive, as amended by this act, to be operative only if included in the certificate of incorporation. It also includes what were, prior to January 1, 1961, designated at law as agreements of association, articles of incorporation, charters and other such terms.

(4) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(5) "Corporation" or "domestic corporation" means a corporation with capital stock, which is not a foreign corporation, incorporated under the laws of this state, whether general law or special act and whether before or after January 1, 1997.

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice including delivery by hand, mail, commercial delivery and electronic transmission.

(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

(8) "Document" includes anything delivered to the office of the Secretary of the State for filing under sections 33-600 to 33-998, inclusive, as amended by this act.

(9) "Effective date of notice" is defined in section 33-603.

(10) "Electronic transmission" or "electronically transmitted" means

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any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(11) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(12) "Entity" includes a corporation and foreign corporation; nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust and two or more persons having a joint or common economic interest; and state, United States or foreign government.

(13) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter including, but not limited to, reasonable counsel fees.

[(13)] (14) "Facts objectively ascertainable" outside of a plan or filed document is defined in subsection (l) of section 33-608.

[(14)] (15) "Foreign corporation" means a corporation incorporated under a law other than the law of this state.

[(15)] (16) "Governmental subdivision" includes authority, county, district and municipality.

[(16)] (17) "Includes" denotes a partial definition.

[(17)] (18) "Individual" includes the estate of an incompetent or deceased individual.

[(18)] (19) "Means" denotes an exhaustive definition.

[(19)] (20) "Notice" is defined in section 33-603.

[(20)] (21) "Person" includes individual and entity.

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[(21)] (22) "Principal office" of a domestic corporation means the address of the principal office of such corporation in this state, if any, as the same appears in the last annual report, if any, filed by such corporation with the Secretary of the State. If no principal office so appears, the corporation's "principal office" means the address in this state of the corporation's registered agent for service as last shown on the records of the Secretary of the State. In the case of a domestic corporation which has not filed such an annual report or appointment of registered agent for service, the "principal office" means the address of the principal place of business of such corporation in this state, if any, and if such corporation has no place of business in this state, its "principal office" shall be the office of the Secretary of the State.

[(22)] (23) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

[(23)] (24) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

[(24)] (25) "Qualified director" is defined in section 33-605.

[(25)] (26) "Record date" means the date established under sections 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, as amended by this act, on which a corporation determines the identity of its shareholders and their shareholdings for purposes of sections 33-600 to 33-998, inclusive, as amended by this act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

[(26)] (27) "Secretary" means the corporate officer to whom under the bylaws or by the board of directors is delegated responsibility under subsection (c) of section 33-763 for custody of the minutes of the

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meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

[(27)] (28) "Secretary of the State" means the Secretary of the State of Connecticut.

[(28)] (29) "Shares" means the units into which the proprietary interests in a corporation are divided.

[(29)] (30) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

[(30)] (31) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

[(31)] (32) "State", when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

[(32)] (33) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

[(33)] (34) "United States" includes any district, authority, bureau, commission, department and other agency of the United States.

[(34)] (35) "Voting group" means all shares of one or more classes or series that under the certificate of incorporation or sections 33-600 to 33-998, inclusive, as amended by this act, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the certificate of incorporation or said sections to vote generally on the matter are for that purpose a single voting group.

[(35)] (36) "Voting power" means the current power to vote in the

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election of directors.

Sec. 18. Section 33-726 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's [reasonable expenses, including attorney's fees,] expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's [reasonable expenses, including attorney's fees,] expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's [reasonable expenses, including attorney's fees,] expenses incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or [to] cause unnecessary delay or needless increase in the cost of litigation.

Sec. 19. Section 33-872 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The court in an appraisal proceeding commenced under section 33-871 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds

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equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by sections 33-855 to 33-872, inclusive, as amended by this act.

(b) The court in an appraisal proceeding may also assess the [fees and expenses of counsel and experts for] expenses of the respective parties, in amounts the court finds equitable: (1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of sections 33-860 to 33-868, inclusive, as amended by this act; or (2) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the [fees and] expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by sections 33-855 to 33-872, inclusive, as amended by this act.

(c) If the court in an appraisal proceeding finds that the [services of counsel for] expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated, and that [the fees for those services] such expenses should not be assessed against the corporation, the court may [award to such counsel reasonable fees to] direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to section 33-865, 33-867, as amended by this act, or 33-868, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all [costs and] expenses of the suit. [, including counsel fees.]

Sec. 20. Subsection (c) of section 33-948 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

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October 1, 2009):

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's [costs, including reasonable attorney's fees,] expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

Sec. 21. Subsection (c) of section 33-949 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's [costs, including reasonable counsel fees,] expenses incurred in connection with the application.

Sec. 22. (NEW) (*Effective October 1, 2009*) (a) A corporation has delivered written notice or any other report or statement under any provision of sections 33-600 to 33-998, inclusive, of the general statutes, as amended by this act, the certificate of incorporation or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one copy of the notice, report or statement to the common address;

(2) The corporation addresses the notice, report or statement to those shareholders either as a group, to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

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(3) Each of those shareholders consents to delivery of a single copy of such notice, report or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who delivers written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection (a) of this section, shall be deemed to have consented to receiving such single copy at the common address.

Sec. 23. Section 33-896 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office, is located may dissolve a corporation:

(1) In a proceeding by a shareholder if it is established that: (A) (i) The directors are deadlocked in the management of the corporate affairs, (ii) the shareholders are unable to break the deadlock, and (iii) irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; (B) the directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent; (C) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have

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expired; or ~~[(B)]~~ (D) the corporate assets are being misapplied or wasted;

(2) In a proceeding by a creditor if it is established that: (A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or (B) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(3) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

[(b) The superior court for the judicial district where the corporation's principal office or, if none in this state, its registered office, is located shall dissolve a corporation: (1) In a proceeding by a holder or holders of shares having voting power sufficient under the circumstances to dissolve the corporation pursuant to the certificate of incorporation; (2) in a proceeding by a shareholder or a director when it is established that (A) under the provisions of sections 33-600 to 33-998, inclusive, or of the certificate of incorporation or bylaws, the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock or (B) the shareholders are deadlocked in voting power for the election of directors and for that reason have been unable at the next preceding annual meeting to elect successors to directors whose term would normally have expired upon the election of their successors.]

(b) Subdivision (1) of subsection (a) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares that are: (A) Listed on the New York Stock Exchange, the American Stock Exchange or any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the National Association of Securities Dealers, Inc.; or (B) not so listed or quoted, but are held by at least

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three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than ten per cent of such shares. As used in this subsection, "beneficial shareholder" has the meaning specified in subdivision (2) of section 33-855, as amended by this act.

Sec. 24. Subsection (d) of section 33-897 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(d) Within ten days of the commencement of a proceeding under subdivision (1) of subsection (a) of section 33-896, as amended by this act, to dissolve a corporation, [that is not a public corporation,] the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 33-900, as amended by this act, and accompanied by a copy of said section.

Sec. 25. Section 33-898 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) [A] Unless an election to purchase has been filed under section 33-900, as amended by this act, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has [exclusive] jurisdiction over the corporation and all of its property wherever located.

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(b) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers: (1) The receiver (A) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (B) may sue and defend in his own name as receiver of the corporation in all courts of this state; (2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and [expense disbursements or reimbursements made] expenses paid or reimbursed to the receiver or custodian [and his counsel] from the assets of the corporation or proceeds from the sale of the assets.

Sec. 26. Subsection (a) of section 33-899 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 33-896, as amended by this act, exist, it may [, in the case of the grounds specified in subsection (a)

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of said section, and shall, in the case of grounds specified in subsection (b) of said section,] enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of the State, who shall file it.

Sec. 27. Section 33-900 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) In a proceeding under subdivision (1) of subsection (a) of section 33-896, as amended by this act, to dissolve a corporation, [that is not a public corporation,] the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of section 33-896, as amended by this act, or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to ownership of shares as of the date the first election was filed, unless they otherwise agree or the court

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otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of section 33-896, as amended by this act, may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the proceedings under subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of section 33-896, as amended by this act, and determine the fair value of the petitioner's shares as of the day before the date on which the petition was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a

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specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. In a proceeding under subdivision (1) of subsection (a) of section 33-896, as amended by this act, if the court finds that the petitioning shareholder had probable grounds for relief under said subdivision, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under section 33-896, as amended by this act, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt a certificate of dissolution pursuant to sections 33-881 and 33-882, which certificate of dissolution must then be adopted and filed within fifty days thereafter. Upon filing of such certificate of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 33-884 to 33-887, inclusive, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

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(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of fees and expenses pursuant to subsection (e) of this section, is subject to the provisions of section 33-687.

Sec. 28. Section 33-818 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety per cent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless (1) the certificate of incorporation of any of the corporations otherwise provides, and (2) in the case of a foreign subsidiary, approval by the foreign subsidiary's board of directors or shareholders is required by the law under which the subsidiary is organized. [or by which it is governed.]

(b) If under subsection (a) of this section approval of a merger by the subsidiary's shareholders is not required, [under subsection (a) of this section,] the parent corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of sections 33-815 to 33-829, inclusive, applicable to mergers generally.

Sec. 29. Section 33-770 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

As used in sections 33-770 to 33-779, inclusive:

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(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

[(3) "Expenses" include counsel fees.]

[(4)] (3) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

[(5)] (4) "Official capacity" means: (A) When used with respect to a director, the office of director in a corporation; and (B) when used with respect to an officer, as contemplated in section 33-776, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

[(6)] (5) "Party" means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

[(7)] (6) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative,

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arbitrative or investigative and whether formal or informal.

Sec. 30. Subsection (c) of section 33-951 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(c) Such corporation shall [mail] deliver the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder [who was not mailed] to whom the statements were not delivered, the corporation shall [mail him] deliver to such shareholder the latest financial statements. Any delivery of financial statements by electronic transmission permitted by this section must be in a manner authorized by the shareholder. A public corporation may fulfill its responsibilities under this subsection by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

Approved May 20, 2009